

## **REMARKS**

Claims 1-37 are currently pending in the subject Application.

Although the Applicant believes Claims 1-37 are directed to patentable subject matter without amendment, the Applicant has amended independent Claims 1, 13, 23, and 24 to more particularly point out and distinctly claim the Applicant's invention. Applicant has likewise amended claims 36 and 37 to correct certain typographical errors. By making these amendments, the Applicant makes no admission concerning the merits of the Examiner's rejection, and respectfully reserves the right to address any statement or averment of the Examiner not specifically addressed in this response.

Applicant respectfully submits that all of Applicant's amendments and arguments are without *prejudice* or *disclaimer*. In addition, Applicant has merely discussed example distinctions from the cited prior art. Other distinctions may exist, and as such, Applicant reserves the right to discuss these additional distinctions in a future Response or on Appeal, if appropriate. Applicant further respectfully submits that by not responding to additional statements made by the Examiner, Applicant does not acquiesce to the Examiner's additional statements. The example distinctions discussed by Applicant are considered sufficient to overcome the Examiner's rejections.

Claims 1-11, 13-21, 23-34, 36, and 37 stand rejected under 35 U.S.C. § 103(a) over U.S. Patent No. 5,991,739 to Cupps, et al. ("*Cupps*") in view of U.S. Patent No. 4,971,406 to Hanson ("*Hanson*") and U.S. Patent No. 5,895,454 to Harrington ("*Harrington*").

Claims 12, 22, and 35 stand rejected under 35 U.S.C. § 103(a) over *Cupps* in view of *Hanson* and *Harrington*, and further in view of U.S. Patent No. 4,797,818 to Cotter ("*Cotter*").

Reconsideration and withdrawal of the foregoing rejections is respectfully requested in light of the above amendments and following remarks.

**REJECTION OF CLAIMS 1-11, 13-21, 23-34, 36, AND 37 UNDER 35 U.S.C. § 103(a):**

Claims 1-11, 13-21, 23-34, 36, and 37 stand rejected under 35 U.S.C. § 103(a) over *Cupps* in view of *Hanson* and *Harrington*, which rejections are respectfully traversed. As noted above, the Applicant has amended independent Claims 1, 13, 23, and 24 to more particularly point out and distinctly claim the Applicant's invention.

With respect to Amended Independent Claims 1, 13, 23, and 24, these claims recite systems, software, and a method for brokering food order transactions among a plurality of unaffiliated sellers comprising one or more databases. Independent Claims 1, 13, 23 and 24 have been amended to further recite that "one or more databases" (or, "means for storing" in claim 23) comprising:

*preference information for at least one of the plurality of buyers, wherein the preference information comprises at least one of a maximum price preference, a minimum price preference, and a restaurant rating preference;* (Emphasis Added).

A plain reading of *Harrington* (alone and/or in combination with *Cupps* and/or *Hanson*) reveals that *Harrington* simply fails to disclose, teach, suggest, a "database" (or, "means for storing" in claim 23) having "*at least one of a maximum price preference, a minimum price preference, and a restaurant rating preference*" as claimed in Amended independent Claims 1, 13, 23, and 24. The portions of *Harrington* relied upon by the Examiner (and *Harrington* in its entirety), clearly fails to disclose a database/means for storing having "*at least one of a maximum price preference, a minimum price preference, and a restaurant rating preference.*"

The Examiner asserts that "Harrington discloses a system using the internet where in addition to other criteria *such as price* etc...the delivery time is included to the customer in a hierarchical scheme, in other words rank, *from a plurality of sellers for comparison...*" (Final Office Action, 30 June 2008, Page 3). (Emphasis added). Even accepting the construction of *Harrington* that the Examiner has set forth, with which Applicant does not admit, it is clear that *Harrington* (alone or in combination) fails to disclose a database having "*at least one of a maximum price preference, a minimum price preference, and a restaurant*

*rating preference.*” Significantly, the price consideration in *Harrington* merely relates, if at all, to providing a buyer with price information to be ***considered*** in a comparison by the buyer. Therefore, for at least the foregoing reasons, it is clear that *Harrington* in no way discloses amended independent Claims 1, 13, 23, and 24 elements relating at least “***at least one of a maximum price preference, a minimum price preference, and a restaurant rating preference.***”

Moreover, *Harrington*, *Cupps*, and *Hanson* likewise each fail to disclose, teach or suggest a database (“means for storing” – claim 23) that includes “***at least one of a maximum price preference, a minimum price preference, and a restaurant rating preference***” as claimed in amended independent Claims 1, 13, 23, and 24. While in *Harrington*, a user may be provided with certain information for comparison by the buyer, it is clear that “a restaurant rating preference” is absent both from any database in *Harrington*, as well as a factor in generating any list in *Harrington*. There is simply no question that the proposed *Harrington/Cupps/Hanson* combination utterly fails to disclose “a restaurant rating preference of at least one of the plurality of buyers.” Significantly, the cited portions of *Harrington*, *Cupps*, and *Hanson* relied upon by the Examiner (and even those references in their entirety), clearly fail to disclose “a restaurant rating preference of at least one of the plurality of buyers.”

#### **Applicant’s Claims are Patentable over the Proposed *Cupps-Hanson-Harrington-Cotter* Combination**

As mentioned above, amended independent Claims 1, 13, 23, and 24 are considered patentably distinguishable over *Cupps*, *Hanson*, *Harrington*, and *Cotter*.

With respect to dependent Claims 2-6, 8-12, 14-16, 18-22, 25-29, and 31-37: Claims 2-12 depend from amended independent Claim 1; Claims 14-22 depend from amended independent Claim 13; Claims 25-37 depend from amended independent Claim 24. As set forth above, each of amended independent Claims 1, 13, 23, and 24 are considered patentably distinguishable over the proposed combination of *Cupps*, *Hanson*, *Harrington*, and *Cotter*. Thus, dependent Claims 2-6, 8-12, 14-16, 18-22, 25-29, and 31-37 are considered to be in condition for allowance for at least the reason of depending from an allowable independent claim.

For at least the reasons set forth herein, Applicant respectfully submits that Claims 1-37 are not rendered obvious by the proposed combination of *Cupps*, *Hanson*, *Harrington*, and *Cotter*. Applicant further respectfully submits that Claims 1-37 are in condition for allowance. Thus, Applicant respectfully requests that the rejection of Claims 1-37 under 35 U.S.C. § 103(a) be reconsidered and that Claims 1-37 be allowed.

## **CONCLUSION**

In view of the foregoing amendments and remarks, this application is considered to be in condition for allowance, and early reconsideration and a Notice of Allowance are earnestly solicited.

A Request for Continued Examination (RCE) is being filed electronically herewith to facilitate the processing of this deposit account authorization. **The Director is hereby authorized to charge the \$810.00 RCE fee, to Deposit Account No. 500777.** Although the Applicant believes no additional fees are deemed to be necessary; the undersigned hereby authorizes the Director to charge any additional fees which may be required, or credit any overpayments, to **Deposit Account No. 500777.** If an extension of time is necessary for allowing this Response to be timely filed, this document is to be construed as also constituting a Petition for Extension of Time Under 37 C.F.R. § 1.136(a) to the extent necessary. Any fee required for such Petition for Extension of Time should be charged to **Deposit Account No. 500777.**

**Please link this application to Customer No. 53184 so that its status may be checked via the PAIR System.**

Respectfully submitted,

30 September 2008  
Date

/Steven J. Laureanti/signed  
Steven J. Laureanti, Registration No. 50,274

BOOTH UDALL, PLC  
1155 W. Rio Salado Pkwy., Ste. 101  
Tempe AZ, 85281  
214.636.0799 (mobile)  
480.830.2700 (office)  
480.830.2717 (fax)  
steven@boothudall.com

**CUSTOMER NO. 53184**